

Claimant alleges he injured his low back while cleaning out a milo grain bin by using a large vacuum cleaner on Wednesday, March 8, 2000. At the time of the alleged accident, claimant had only been employed by the respondent since February 21, 2000,

and was a probationary employee. Because claimant was on probation, he testified he did not immediately report his low-back injury to respondent.

Claimant continued to work for the rest of the week, including Saturday until 12:00 o'clock noon. After he was off work on Saturday, claimant, with the respondent's permission, borrowed one of the respondent's pick-up trucks and loaded, cut, and unloaded four pieces of steel pipe each weighing approximately 100 pounds. The joints of pipe were for claimant's personal use in reinforcing the floor of his home.

Because claimant's back continued to worsen, his wife made an appointment for him to see a local chiropractor, Darrel K. Loder, D.C. Claimant's wife made the appointment on Friday for Monday, March 13, 2000, but the claimant's low back worsened over the weekend, and the claimant was not able to make the Monday appointment. The claimant was also unable to go to work on Monday. He telephoned his employer and told them he had a sore back. But claimant testified he did not tell the respondent, at that time, his back problem was related to his work.

Although his back was still bothering him, claimant was able to return to work on Tuesday, May 14, 2000, but left work early in order to see Dr. Loder at 3:15 p.m. Dr. Loder's medical treatment records were admitted into the preliminary hearing record. The records indicate claimant gave Dr. Loder a history of injuring his low back at work on March 8, 2000. The records also indicate claimant's wife referred claimant to Dr. Loder. Dr. Loder took claimant off work for two or three days and then placed temporary restrictions on claimant. The respondent could not accommodate those restrictions, and as of the date of the preliminary hearing, respondent had not returned the claimant to work.

Both claimant and Charles D. Schmidt, respondent's agronomy manager and claimant's supervisor, testified that claimant left an authorization for medical treatment on Mr. Schmidt's desk for his signature on Monday, March 20, 2000. Mr. Schmidt testified that was the first time he had been notified claimant was claiming he hurt his back at work. Although the notice was twelve calendar days after claimant allegedly injured his back on March 8, 2000, this meets the ten-day statutory requirement because the intervening Saturdays and Sundays are not included in computing the ten-day period.<sup>1</sup>

Respondent principally argues, despite claimant allegedly knowing exactly when he injured his back, he did not notify the respondent until after he performed the heavy work of lifting the pipes for his personal use. Respondent contends, after claimant lifted the pipes, his back worsened to the point that claimant could not go to work and needed to go to the doctor on the following Monday. Accordingly, the respondent argues claimant suffered an intervening accident not related to his work and benefits should be denied.

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<sup>1</sup>See Bain v. Cormack Enterprises, Inc., 267 Kan. 754, 986 P.2d 373 (1999).

The Appeals Board concludes it is significant, at this point in the proceedings, that claimant's wife made the appointment for the claimant to see Dr. Loder on the Friday before claimant lifted the pipes for his personal use. Therefore, claimant had, at that time, already suffered a significant injury to his low back. Additionally, claimant testified, because of his continuing low-back symptoms, he was careful when he lifted the pipes and only lifted one end. Claimant further testified, after he worked with the pipes on Saturday, his back symptoms did not worsen.

The Appeals Board concludes, for preliminary hearing purposes, claimant has proven through his testimony and the chiropractor's medical treatment records that he injured his low back while performing his regular work activities for the respondent. The pipe-lifting incident, if anything, only resulted in a temporary exacerbation of claimant's low-back symptoms, as the present evidence does not raise this incident to the level of proving an intervening accident.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Bruce E. Moore's May 25, 2000, preliminary hearing Order should be, and it is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2000.

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BOARD MEMBER

c: Rodney G. Nitz, Salina, KS  
Jeffrey E. King, Salina, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director